

Our Ref: 3350-042B
File No: 1158.41327CC2
Client Ref: MoneyWeb-B

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of
GANESAN, et al.

Application No: 09/849,979

Filed: May 8, 2001

For: ELECTRONIC GREETING CARD WITH GIFT PAYMENT

APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

September 20, 2004

Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed July 19, 2004
of the finally rejected claims as set forth in the final Official Action dated April 19, 2004.

I. REAL PARTY IN INTEREST

CheckFree Services Corporation, is the assignee of all rights in the subject
application under Reel ____, Frame ____.

**II. RELATED PRIOR OR PENDING APPEALS, INTERFERENCES OR JUDICIAL
PROCEEDINGS**

NONE.

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III. STATUS OF CLAIMS

Claims 58-81 are pending in this application, of which claims 58, 69 and 80 are independent. Claims 58-81 stand finally rejected. Accordingly, the final rejection of claims 58-81 is under appeal.

IV. STATUS OF AMENDMENTS, INCLUDING AMENDMENTS AFTER FINAL

A Preliminary Amendment was filed concurrently with the subject application on May 8, 2001. A Second Preliminary Amendment was filed on July 12, 2002 to correct claim number errors. Amendments were also filed on November 25, 2002, and January 29, 2004. All amendments have been entered. Requests for Reconsideration were also filed on May 23, 2003 and June 21, 2004. No amendments have been filed after the final rejection of the claims.

V. SUMMARY OF INVENTION

In accordance with the invention, the preferred communications and steps generally performed by a processing agent 130 to affect an electronic gift, are depicted in Figure 18A and 18B, and describe on page 59, line 15, through page 67, line 2. However, the preferred technique for delivery of an electronic gift payment with an electronic greeting card (e-card) is more particularly depicted Figures 19A-19C, and described on page 67, line 3, through page 75, line 15.

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As for example, described on page 67, lines 18-19, a donor (such as registered donor 1800A shown in Figure 18A) submits a request to the processing agent 130 (see Figure 18A) to send an e-card with an electronic gift payment. As noted on page 67, lines 25-29, the donor selects an e-card and submits the selection to the processing agent 130, along with any text the donor may specify to be included in the e-card. As described on page 67, line 35, through page 68, line 2, the e-card request can be stored in the database 1805 (see Figure 18A).

As further described on page 68, lines 14-16, the processing agent transmits the e-card, e.g., via e-mail, to the recipient. As described on page 68, lines 19-24, although the e-card may itself be transmitted as an e-mail message, Alternatively, an e-mail with a hyperlink back to the processing agent may be transmitted initially, and the e-card later transmitted after the recipient activates the hyperlink to a web page displaying the e-card.

As described on page 68, lines 25-30, the generated electronic greeting card includes a notification to the recipient of the monetary gift in addition to whatever additional text has been specified by the donor. It should be noted that the transmitted e-card must necessarily be generated by, for example, the processing agent 130 to, at an minimum, incorporate the notification of the monetary gift and any text the donor has specified to be included in the selected e-card, such as the donor's name and/or a personal message.

As described on page 68, lines 8-16, and page 68, line 31, through page 69, line

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17, the processing agent 130 may direct a crediting of funds from the donor's account to the processing agent's account, and/or may also direct a crediting of funds to the recipient's account.

As described on page 68, lines 14-16, optionally the electronic greeting card may not be transmitted until after the processing agent 130 has directed a crediting of funds from the donor's account to the processing agent's account. As described on page 68, lines 31-35, the credit to the recipient's account can be initiated either before or concurrent with the transmission of the e-card to the recipient. As further described on page 69, lines 6-9, if the e-card includes a hyperlink, the crediting of the recipient's account may be initiated after the recipient has identified himself or herself to the processing agent 130. It is perhaps worthwhile noting here that, as shown in Figure 14A, both the donor account and processing agent account may be located at a financial institution (FI).

As described on page 69, lines 18-30, the processing agent 130 determines whether or not the recipient is a registered member of an enclosed community, such as enclosed community 201 shown in Figure 2. If not, the e-card may include a notice of the availability of the electronic gift, and that the recipient must register to receive the gift payment.

As described on page 72, line 29, through page 73, line 3, the designated recipient can further transmit an electronic greeting card including a hyperlink, with the notification of a monetary gift, to a non-designated recipient who can then activate the

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hyperlink to receive the gift.

As described on page 70, line 14, through page 72, line 13, the processing agent 130 may work in conjunction with an electronic greeting card service. The electronic greeting card service may receive the request to send an electronic greeting card and to make an associated monetary gift on behalf of a requesting donor to a designated recipient. In such case, the electronic greeting card service may generate and transmit the electronic greeting card while the processing agent 130 directs the crediting of funds. On the other hand, the processing agent 130 may transmit the generated electronic greeting card to the electronic greeting card service prior to transmission of the electronic greeting card to the designated recipient.

VI. GROUNDS FOR REJECTION PRESENTED FOR REVIEW

- 1.) The anticipation of claims 58, 63, 65-69 and 74-79 under 35 USC §102(e), by Van Dusen (U.S. Patent No. 6,175,823).
- 2.) The obviousness of claims 58, 65, 67-69, 75-76, and 79-80 under 35 USC §103(a), over Van Dusen in view of Lenhart (Lenhart, J. "Happy Holidays, High-Tech Style: Sending Cards over the Internet Gains Popularity", The Washington Post (December 20, 1998)).
- 3.) The obvious rejection of claims 59-62, 64 and 70-73 under 35 USC §103(a), over Van Dusen in view of Albrecht (U.S. Patent No. 5,984,180), or alternatively over Van Dusen, in view of Lenhart and Albrecht.

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4.) The obviousness of claim 81 under 35 USC §103(a), over Van Dusen in view Lenhart and Official Notice.

VII. ARGUMENT

Claims 58, 63, 65-69 and 74-79 stand rejected under 35 USC §102(e) as anticipated by Van Dusen (U.S. Patent No. 6,175,823), claims 58, 65, 67-69, 75-76, and 79-80, stand rejected under 35 USC §103(a) as obvious over Van Dusen in view of Lenhart (Lenhart, J. "Happy Holidays, High-Tech Style: Sending Cards over the Internet Gains Popularity", The Washington Post (December 20, 1998)). Claims 59-62, 64 and 70-73 stand rejected under 35 USC §103(a) as obvious over Van Dusen in view of Albrecht (U.S. Patent No. 5,984,180), or alternatively over Van Dusen, in view of Lenhart and Albrecht. Claim 81 stands rejected under 35 USC §103(a) over Van Dusen in view Lenhart and Official Notice. Appellant respectfully traverses the rejections of claims 58-81.

As discussed below in detail, it is respectfully submitted that the final rejection lacks the requisite supporting factual basis and/or reasonable rationale. Further still, it is respectfully submitted that the art applied in rejecting the claims neither teaches nor suggests the claimed invention. It is also respectfully submitted that recited limitations have been ignored, the relied upon art has been construed in a manner inconsistent with its own teaching and the rejection is at best based on an improper hindsight reconstruction of the claimed invention.

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1. THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE CASE

The initial burden of establishing a basis for denying patentability to a claimed invention rests upon the examiner. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Thorpe, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985); In re Piasecki, 745 F.2d 1468, 223 USPQ 785 (Fed. Cir. 1984).

The limitations required by the claims cannot be ignored. See In re Wilson, 424 F.2d 1382, 165 USPQ 494 (CCPA 1970). All claim limitation, including those which are functional, must be considered. See In re Oelrich, 666 F.2d 578, 212 USPQ 323 (CCPA 1981). Hence, all words in a claim must be considered in deciding the patentability of that claim against the prior art. Each word in a claim must be given its proper meaning, as construed by a person skilled in the art. Where required to determine the scope of a recited term, the disclosure may be used. See In re Barr, 444 F.2d 588, 170 USPQ 330 (CCPA 1971).

The Examiner must provide sufficient factual basis or rationale as to how features of the invention recited in the claims are taught or suggested in the applied art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988). That is, objective evidence must be presented by the Examiner in support of the rejection. Without such support, the rejection is improper per se.

It is respectfully submitted that the Examiner has failed to establish a prima facie case for the rejections based on anticipation and obviousness. More particularly, the

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Examiner has failed to provide objective support or reasonable rationale for the rejections, has ignored limitations recited in the claims, and has applied art in a manner inconsistent with its teachings.

1.) Claims 58, 63, 65-69 and 74-79 stand rejected under 35 USC §102(e) as anticipated by Van Dusen (U.S. Patent No. 6,175,823).

Independent claim 58 requires, *inter alia*, that (1) a request to send an electronic greeting card and to make an associated monetary gift in an amount, on behalf of a requesting donor to a designated recipient, be received via a network; (2) the received request be processed to generate the electronic greeting card including a notification of the monetary gift; (3) the generated electronic greeting card be transmitted, via the network, to the designated recipient, and (4) a credit of funds equal to the amount of the monetary gift to a deposit account be directed.

Independent claim 69 requires, *inter alia*, (1) a communications port configured to receive a request to send an electronic greeting card and to make an associated monetary gift in an amount, on behalf of a requesting donor to a designated recipient, via a network, and (2) a processor configured to process the received request to generate the electronic greeting card including a notification of the monetary gift, and to direct a crediting of a deposit account in the amount of the monetary gift.

Thus, each of the above referenced claims requires the generation of an electronic greeting card including a notification of the monetary gift.

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The Examiner asserts that Van Dusen teaches such limitations. More particularly, the Examiner contends that the inclusion of an optional text message such as "Happy Birthday Mom!!", shown in both Figures 1 and 2 of Van Dusen, makes the e-mail message taught by Van Dusen equivalent to the electronic greeting card required by the subject claims.

Exemplary electronic greeting cards are currently available at numerous Web sites, some of which have been in operation now for many years, and the phrase "electronic greeting card(s)", also known as "e-card(s)", is a term of art, which has an established and well known meaning to those skilled in the art. The phrase "electronic greeting card(s)" is defined in the TechEncyclopedia, hosted by TechWeb at techweb.com/encyclopedia/defineterm?term=e-card, to be a particular type of message that "in addition to your own text, e-cards allow different backgrounds, images and music to be used." (emphasis added) Indeed, a similar description of an "electronic greeting card" is found in the Lenhart reference, which is also applied in finally rejecting claims of this application. Thus, an "electronic greeting card" is understood by those skilled in the art to be the electronic equivalent to a paper greeting card.

It is respectfully submitted that, contrary to the Examiner's contention, Van Dusen, lacks any disclosure or suggestion of generating an electronic greeting card as required by each of the above referenced claims.

Rather, what Van Dusen explicitly discloses is the generation of an e-mail text message that includes text communicating the giving of a gift certificate. The Detailed

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Description of Van Dusen exclusively refers to Van Dusen's messages as e-mail text messages. For example, at column 3, lines 64-65, Van Dusen states that "Fig. 2. Illustrates the general form of the gift certificate e-mail document ("e-mail") that is sent to the recipient." Also, at column 4, lines 24-25, Van Dusen discloses that "...the e-mail also preferably includes...". Still further, at column 6, lines 35-36, Van Dusen recites "[t]he application 72 also generates an e-mail document to send to the recipient."

The mere fact that an e-mail message contains similar text to that which might be contained in an "electronic greeting card" does not somehow transform the e-mail message into an "electronic greeting card", just as the mere fact that a letter contains similar text to that which might be contained in a paper greeting card does not somehow transform the letter into a paper greeting card.

The Examiner also contends that the present application, on page 65, line 13, discloses that an e-mail may be the entire e-card and, in view of this disclosure, argues that the electronic greeting card required by each of the above referenced claims corresponds to Van Dusen's e-mail based gift certificate, because Van Dusen teaches an e-mail message being sent to a recipient in order to communicate the giving of a gift certificate.

However, this argument ignores that fact that an "e-card" or "electronic greeting card" has an established meaning in the art. The referenced specification text (which appears on page 64, lines 8-9, not on page 65, line 13), simply discloses that an e-mail message may take the form of an "e-card", as is further clarified in the next sentence of

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the specification (see page 64, lines 9-10). Thus, what is disclosed in the referenced text of the present application is that the generated "electronic greeting card" (i.e. which includes, in addition to the sender's own text, a selectable background, image and/or music, so as to be an electronic equivalent to a paper greeting card) could be transmitted as an e-mail message. Thus, what is described in the referenced portion of the specification is a novel type of e-mail message that can be generated to provide notification of the monetary gift.

It is further noted that this difference is more than a simple change in the form of a message. Rather, as described in detail on pages 62-68 of the application, the present invention requires novel and unobvious functionality which is not disclosed in Van Dusen or any other prior art applied in finally rejecting the claims.

In view of the above, it is respectfully submitted that Van Dusen teaches nothing more than the generation of a text message (that is an electronic equivalent of a paper letter or note), and lacks any teaching or suggestion of the generation of an "electronic greeting card", i.e. a message, email or otherwise, corresponding to an "electronic greeting card" having a selectable different background, image and/or music (that is an electronic equivalent of a paper greeting card) as required by the above claims.

Accordingly, it is respectfully submitted that the rejection is based on a construction of Van Dusen which is inconsistent with the applied prior art's teachings and ignores the well understood meaning of the phrase "electronic greeting card" to those skilled in the art.

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With respect to claims 63 and 74, the Examiner's position cannot be understood.

More particularly, these claims require that a generated electronic greeting card, which includes a notification of a monetary gift, be transmitted to a designated recipient (i.e. a recipient designated by the requesting donor). Additionally required is that this electronic greeting card be further transmitted to a non-designated recipient (i.e. a recipient not designated by the donor), and that a hyperlink in this further transmitted electronic greeting card be activated and that information identifying the non-designated recipient be received via the activated hyperlink.

The Examiner argues that Van Dusen, in column 6, lines 61, through column 7, line 4 (not column 5, line 4), teaches these limitations.

However, what is taught in the referenced section of Van Dusen is multiple hyperlinks, not multiple transmissions to different recipients. Hence, contrary to the Examiner's assertion, Van Dusen lacks any teaching or suggestion of limitations recited in claims 63 and 74.

Furthermore, claims 63 and 74 further require that the deposit account be at a financial institute. It appears the Examiner has completely ignored this limitation.

Claim 75 requires that a payment account be debited subsequent to the activation of a hyperlink included in the transmitted electronic greeting card.

The Examiner argues that this is nothing more than a change in the sequence of known steps and on this basis gives the limitation no patentable weight.

However, the Examiner's position ignores the objectives met and benefits

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obtained by including the required timing of the debiting limitation of claim 75. The applied art fails to even recognize these benefits, let alone suggest that such benefits could be obtained with the functionality required by claim 75. For example, by debiting the payment account subsequent to the activation of the hyperlink in the transmitted electronic greeting card, there will be no need to credit back gift amounts to the donor's account in the event the intended recipient cannot be located, fails to respond or refuses the gift. Thus, this feature improves efficiency.

Claims 66 and 77 require that the request to send an electronic greeting card and to make an associated monetary gift on behalf of a requesting donor to a designated recipient be received from a greeting card service.

The Examiner first asserts that this limitation is inherent to Van Dusen, but fails to provide any reasonable support for this bald assertion.

The Examiner then points to column 5, lines 29-31, and column 6, lines 35-36, as disclosing the required limitations, but fails to explain how the referenced Van Dusen disclosure is relevant. Instead, the Examiner seems to be arguing that a gift certificate application, which submits a command to an Internet service provider (ISP) to transmit an e-mail to a designated e-mail account, would be equivalent to a greeting card service submitting a request to send an electronic greeting card and to make an associated monetary gift on behalf of a requesting donor to a designated recipient, as required by the referenced claims.

However, the rationale for this position is entirely unclear. Even if a gift certificate

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application were to submit a command to an ISP to transmit an e-mail to a designated e-mail account, one can only ask how this would correspond to the submission of a request to send an electronic greeting card and to make an associated monetary gift on behalf of a requesting donor to a designated recipient?

Claims 67 and 78 require that the request to send an electronic greeting card and to make an associated monetary gift on behalf of a requesting donor to a designated recipient be received and processed by electronic greeting card service, and that the generated electronic greeting card be transmitted by such electronic greeting card service, and that the crediting of funds equal to the monetary gift amount be credited to the deposit account by a payment service.

The Examiner's arguments in support of the rejection of these claims cannot be understood.

Although the Examiner asserts that Van Dusen issues an electronic greeting card, this is simply incorrect. Furthermore, even if Van Dusen did teach the issuance of an electronic greeting card, it is the Van Dusen system (not a separate payment service) that directs the crediting of the gift certificate amount to an account. Nowhere, within Van Dusen, is there any suggestion of separate services or entities, one of which generates and transmits notices of a gift and another of which credits an account in an amount corresponding to the gift. The Examiner appears to confuse Van Dusen's required debiting of a credit card with the depositing of the gift certificate amount in a unique gift account (see Van Dusen column 6, line 61, through column 7, line 4).

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Claims 68 and 79 require, *inter alia*, that the generated electronic greeting card, including the notification of the monetary gift, be transmitted, via the network, to an electronic greeting card service. In claim 68, this transmission must occur prior to transmitting the electronic greeting card, including the notification of the monetary gift, to the designated recipient.

The Examiner points to column 3, lines 37-63, of Van Dusen for a corresponding disclosure, and argues that the act of a donor transmitting a request to the issuing entity (which the Examiner construes as an electronic greeting card service) satisfies the claimed limitations.

However, in addition to Van Dusen's lack of any disclosure of an electronic greeting card (as discussed above), Van Dusen also lacks, and the Examiner has failed to identify, any teaching or suggestion of a generated electronic greeting card being transmitted to an electronic greeting card service. Furthermore, the e-mail message of Van Dusen is not generated until *after* the donor request is received, thus how the transmitted request could satisfy these claims cannot be understood.

2.) Claims 58, 65, 67-69, 75-76, and 79-80, stand rejected under 35 USC §103(a) as obvious over Van Dusen in view of Lenhart (Lenhart, J. "Happy Holidays, High-Tech Style: Sending Cards over the Internet Gains Popularity", The Washington Post (December 20, 1998)).

Independent claim 80 requires, *inter alia*, stored computer programming

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configured to be readable from a computer readable medium by a computer to thereby cause the computer to operate so as to (1) receive a request to make a monetary gift on behalf of a requesting donor to a designated recipient, and send an associated electronic greeting card, (2) generate the electronic greeting card including a notification of the monetary gift, based on the received request, (3) cause the electronic greeting card to be transmitted to the designated recipient, and (4) cause funds equal to the monetary gift amount to be credited to a deposit account.

As discussed above, Van Dusen fails to teach or suggest an electronic greeting card. The Lenhart reference, while generally disclosing electronic greeting cards, lacks any teaching or suggestion of a monetary gift or a crediting of a deposit account, as required by each of the independent claims. As understood, the Examiner proposes to modify the teachings of Van Dusen to include an electronic greeting card in accordance with the teachings of Lenhart.

However, it also respectfully submitted that, neither of the references has an objective of, or recognized any benefit in including a monetary gift with an electronic greeting card. Furthermore, even if such an objective or benefit were generally recognized within the art, the applied references themselves lack any suggestion for the proposed combination, or how one would go about modifying that which is disclosed within the respective references to result in the subject invention.

Accordingly, it is respectfully submitted, in view of both the general lack of motivation for the proposed combination and the lack of any suggestion within the

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applied combination itself for the proposed modifications, that the proposed modifications are improper and cannot establish a prima facie basis for the rejection claims 58, 65, 67-69, 75-76, and 79-80.

3.) Claims 59-62, 64 and 70-73 stand rejected under 35 USC §103(a) as obvious over Van Dusen in view of Albrecht (U.S. Patent No. 5,984,180), or alternatively over Van Dusen, in view of Lenhart and Albrecht.

Claims 59 and 70 require that an electronic greeting card be transmitted to the designated recipient either subsequent to, or concurrent with, the directing of the crediting of the funds to the deposit account.

The Examiner acknowledges that Van Dusen and Lenhart, fail to disclose this limitation, and applies Albrecht's teachings to overcome this deficiency. The Examiner then also acknowledges that Albrecht actually teaches crediting an account prior to transmitting greeting card, but argues that the changing of a sequence of steps in a method is obvious absent some unexpected result (citing In re Lindberg, 93 USPQ 23).

However, it is respectfully submitted that the recited limitations provide substantially different functionality from that of Albrecht (and the proposed combination), which in turn results in benefits not recognized by or and objectives being met that are not obtainable from the proposed combination of art.

For example, by transmitting an electronic greeting card to the designated recipient either subsequent to, or concurrent with, the directing of the crediting of the

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funds to the deposit account, the credited funds can be made available to the recipient either immediately upon the recipient's receipt of the electronic greeting card, or promptly thereafter. Albrecht, and hence the applied combination fails, to even recognize this potential benefit or offer any technique for meeting this objective. Indeed, Albrecht discloses a system that is incapable of accomplishing such an objective.

Claims 60 and 71 require the directing of funds to be credited to the deposit account subsequent to an activation of a hyperlink, and that the deposit account be at a financial institution.

The Examiner asserts that "all features that are not taught by a single reference, are expressly stated as missing from the single reference. Thus, negative implication dictates that any features not addressed are taught by the primary of reference. Though not expressly stated, Van Dusen was therefore offered for its teaching of crediting a recipient's account after the activation of a hyperlink. Van Dusen teaches this limitation in Fig. 2, which depicts the e-mail that the gift recipient receives. This figure features a "click here" hyperlink 30, that allows the recipient to "automatically deposit the \$40 gift certificate amount into [his] personal account". Accordingly, Van Dusen teaches crediting the recipient's account after activation of a hyperlink".

The Examiner's position is not understood. The Examiner has acknowledged that Van Dusen lacks any teaching or suggestion of a deposit account at a financial institution. Hence, the Examiner's argument makes no sense on this basis alone.

Furthermore, the Examiner has failed to offer any rationale as to why there would

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be any motivation to modify Van Dusen to make deposits in deposit accounts at financial institutions, since Van Dusen is only concerned with gift certificates.

Accordingly, it is respectfully submitted that the Examiner has failed to provide any reasonable basis for the rejection, and therefore the rejection cannot be understood.

Claim 64 requires that a payment account at a financial institution associated with the donor be debited subsequent to the activation of a hyperlink included in the transmitted electronic greeting card.

The Examiner completely ignores the requirement that the payment account be at a financial institution associated with the donor. Hence, on this basis alone no prima facie basis for the rejection has been established.

Furthermore, the Examiner argues that the debiting subsequent to the activation of a hyperlink included in a transmitted electronic greeting card is nothing more than a change in the sequence of known steps, and hence gives this limitation no patentable weight.

However, as discussed in detail above, the Examiner's position ignores the benefits of and objectives met by the required timing of the debiting in accordance with claim 64, and the failure of the applied art to even recognize such benefits.

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4.) Claim 81 stands rejected under 35 USC §103(a) over Van Dusen in view Lenhart and Official Notice.

Claim 81 requires directing the debiting of funds equal to the monetary gift amount from a deposit account at a financial institution associated with the requesting donor to a deposit account at a financial institution associated with the service provider. Also required is the directing of funds to be credited to the deposit account recited in claim 58 (e.g., the deposit account of the designated recipient), from the deposit account associated with the service provider.

The Examiner acknowledges that these limitations are missing from Van Dusen and Lenhart, and now cites a Credit Card News publication ("Person-To-Anywhere Payments Are Here With Citibanks C2it") (November 15, 2000), and a Bank Technology News publication ("You've Got Money!") (June, 2000) Volume 13, No. 6, page 1), in support of the Official Notice.

However, in the highlighted portion of the Credit Card News publication (i.e. the second paragraph of text), there is nothing to suggest that the disclosed debit results in a payment to a Citicorp account rather than to the payees account.

Likewise, in the highlighted sections of the Bank Technology News publication, there is no disclosure or suggestion of a service provider account. Indeed, in paragraph 6 of the publication text, it is explicitly disclosed that the customer must establish a Pay Pal account. Hence, there is no need for Pay Pal to debit money from a payor's account to a Pay Pal account.

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Thus, the Examiner has failed to provide support for the Official Notice.

Furthermore, it is entirely unclear why one would be motivated to modify the result of any combination of Van Dusen and Lenhart to include the required service provider account at a financial institution.

2. THE APPLIED REFERENCE FAILS TO TEACH THE CLAIMED INVENTION

Anticipation, under 35 U.S.C. §102, requires that each element of the claim in issue be found, either expressly described or under principles of inherency, in a single prior art reference. Although anticipation requires only that the claim under attack "read on" something disclosed in the reference, all limitations of the claim must be found in the reference, or "fully met" by it. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 218 USPQ 781 (Fed. Cir. 1983).

Inherency requires certainty, not speculation. In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); In re King, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986); W. L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983); In re Oelrich, 666 F.2d 578, 212 USPQ 323 (CCPA 1981); In re Wilding, 535 F.2d 631, 190 USPQ 59 (CCPA 1976). Objective evidence must be relied upon to defeat the patentability of the claimed invention. Ex parte Natale, 11 USPQ2d 1222 (BPAI 1988).

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1.) Claims 58, 63, 65-69 and 74-79 stand rejected under 35 USC §102(e) as anticipated by Van Dusen (U.S. Patent No. 6,175,823).

In view of the arguments presented above, it is respectfully submitted that Van Dusen lacks any teaching of, inter alia:

Independent claim 58's required processing of the received request be to generate the electronic greeting card including a notification of the monetary gift.

Independent claim 69's, required processor for processing the received request to generate the electronic greeting card including a notification of the monetary gift, and directing the crediting of a deposit account in the amount of the monetary gift.

Claim 63's and claim 74's, required further transmission of the electronic greeting card to a non-designated recipient (i.e. a recipient not designated by the donor), the activation of the hyperlink in this further transmitted electronic greeting card, the receipt of information identifying the non-designated recipient via the activated hyperlink, and location of the deposit account at a financial institute.

Claim 75's required debiting of a payment account subsequent to the activation of a hyperlink included in the transmitted electronic greeting card.

Claim 66's and claim 77's required receipt from a greeting card service of the request to send an electronic greeting card and to make an associated monetary gift on behalf of a requesting donor to a designated recipient.

Claim 67's and claim 78's required receipt and processing by the electronic greeting card service of the request to send an electronic greeting card and to make an

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associated monetary gift on behalf of a requesting donor to a designated recipient, transmission of the generated electronic greeting card by such electronic greeting card service, and crediting of funds equal to the monetary gift amount to the deposit account by a payment service.

Claim 68's and claim 79's required transmission of the generated electronic greeting card, including the notification of the monetary gift, via the network, to an electronic greeting card service, and in claim 68, occurrence of the transmission prior to transmitting the electronic greeting card, including the notification of the monetary gift, to the designated recipient.

3. THE APPLIED REFERENCE FAILS TO SUGGEST THE CLAIMED INVENTION

In rejecting claims under 35 U.S.C. 103(a), it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. Stratoflex, Inc. v. Aeroquip Corp., 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); In re Warner, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967). It also is incumbent upon the Examiner to provide a basis in fact and/or cogent technical reasoning to support the conclusion that one having ordinary skill in the art would have been motivated to combine references to arrive at a claimed invention. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988). In so doing, the Examiner is required to make the factual determinations set forth in Graham v. John Deere Co. of Kansas City, 383 U.S. 1, 86 S. Ct. 684, 148 USPQ 459 (1966), and to provide a reason why one having ordinary skill in the art would

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have been led to modify the prior art reference to arrive at the claimed invention. Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 227 USPQ 657 (Fed. Cir. 1985).

Such a reason must stem from some teaching, suggestion or inference in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley, 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 227 USPQ 657 (Fed. Cir. 1985); ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 221 USPQ 929 (Fed. Cir. 1984); In re Semaker, 702 F.2d 989, 217 USPQ 1 (Fed. Cir. 1983). Inherency requires certainty, not speculation. In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); In re King, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986); W. L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983); In re Oelrich, 666 F.2d 578, 212 USPQ 323 (CCPA 1981); In re Wilding, 535 F.2d 631, 190 USPQ 59 (CCPA 1976). Objective evidence must be relied upon to defeat the patentability of the claimed invention. Ex parte Natale, 11 USPQ2d 1222 (BPAI 1988).

In determining obviousness, the inquiry is not whether each element existed in the prior art, but whether the prior art made obvious the invention as a whole for which patentability is claimed. Hartness Int'l, Inc. v. Simplimatic Eng'g Co., 819 F.2d 1100, 2 USPQ2d 1826 (Fed. Cir. 1987). It is impermissible to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary

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skill in the art. In re Wesslau, 353 F.2d 238, 147 USPQ 391 (CCPA 1951). Piecemeal reconstruction of prior art patents is improper, In re Kamm, 452 F.2d 1052, 172 USPQ 298 (CCPA 1972). The Examiner must give adequate consideration to the particular problems and solution addressed by the claimed invention. Northern Telecom, Inc. v. Datapoint Corp., 908 F.2d 931, 15 USPQ2d 1321 (Fed. Cir. 1990); In re Rothermel, 276 F.2d 393, 125 USPQ 328 (CCPA 1960).

The fact that the prior art could be modified so as to result in the combination defined by the claims does not make the modification obvious unless the prior art suggests the desirability of the modification. In re Deminski, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986). The test is what the combined teachings would have suggested to those of ordinary skill in the art. In re Keller, 642 F.2d 413, 208 USPQ 817 (CCPA 1981). Simplicity and hindsight are not proper criteria for resolving obviousness, In re Wamer, *supra*. Furthermore, as the Federal Circuit recently reiterated, reliance on common knowledge and/or common sense also cannot be the basis of finding obviousness (See In re Lee, 277 F.3d 1338, 61 USPQ 2d 1430 (Fed. Cir. 2002)). The deficiencies in the applied art cannot be remedied by general conclusions which, in view of the disclosure in the present application, may appear to be common sensible.

The proper approach to the issue of obviousness is whether the hypothetical person of ordinary skill in the art, familiar with the references, would have found it obvious to make a structure corresponding to what is claimed. In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Semaker, 702 F.2d 989, 217 USPQ 1 (Fed. Cir. 1983).

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Hindsight obviousness after the invention has been made is not the test. In re Carroll, 601 F.2d 1184, 202 USPQ 571 (CCPA 1979). The reference, viewed by itself and not in retrospect, must suggest doing what applicant has done. In re Shaffer, 229 F.2d 476, 108 USPQ 326 (CCPA 1956); In re Skoll, 523 F.2d 1392, 187 USPQ 481 (CCPA 1975).

Again, the issue is not whether it is within the skill of the artisan to make the proposed modification but, rather, whether a person of ordinary skill in the art, upon consideration of the references, would have found it obvious to do so. The fact that the prior art could be modified so as to result in the combination defined by the claims would not have made the modification obvious unless the prior art suggests the desirability of the modification. See In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984), In re Deminski, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986), In re Keller, *supra*, and In re Laskowski, 871 F.2d 115, 10 USPQ2d 1397 (CAFC 1989).

1.) Claims 58, 65, 67-69, 75-76, and 79-80, stand rejected under 35 USC §103(a) as obvious over Van Dusen in view of Lenhart (Lenhart, J. "Happy Holidays, High-Tech Style: Sending Cards over the Internet Gains Popularity", The Washington Post (December 20, 1998)).

In view of the arguments presented above, it is respectfully submitted that the applied combinations of art lack any teaching or suggestion of, inter alia:

Independent claim 58's required processing of the received request be to generate the electronic greeting card including a notification of the monetary gift.

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Independent claim 69's, required processor for processing the received request to generate the electronic greeting card including a notification of the monetary gift, and directing the crediting of a deposit account in the amount of the monetary gift.

Claim 67's required receipt and processing by the electronic greeting card service of the request to send an electronic greeting card and to make an associated monetary gift on behalf of a requesting donor to a designated recipient, transmission of the generated electronic greeting card by such electronic greeting card service, and crediting of funds equal to the monetary gift amount to the deposit account by a payment service.

Claim 75's required debiting of a payment account subsequent to the activation of a hyperlink included in the transmitted electronic greeting card.

Claim 68's and claim 79's required transmission of the generated electronic greeting card, including the notification of the monetary gift, via the network, to an electronic greeting card service, and in claim 68, occurrence of the transmission prior to transmitting the electronic greeting card, including the notification of the monetary gift, to the designated recipient.

Independent claim 80's required generation of the electronic greeting card including a notification of the monetary gift, based on the received request.

2.) Claims 59-62, 64 and 70-73 stand rejected under 35 USC §103(a) as obvious over Van Dusen in view of Albrecht (U.S. Patent No. 5,984,180), or alternatively over Van

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Dusen, in view of Lenhart and Albrecht.

In view of the arguments presented above, it is respectfully submitted that the applied combinations of art lack any teaching or suggestion of, inter alia:

Claim 59's and claim 70's required transmission of an electronic greeting card to the designated recipient either subsequent to, or concurrent with, the directing of the crediting of the funds to the deposit account.

Claim 60's and claim 71's required directing of funds to be credited to the deposit account subsequent to an activation of a hyperlink, and location of the deposit account at a financial institution.

Claim 64's required debiting of a payment account at a financial institution associated with the donor subsequent to the activation of a hyperlink included in the transmitted electronic greeting card.

3.) Claim 81 stands rejected under 35 USC §103(a) over Van Dusen in view Lenhart and Official Notice.

In view of the arguments presented above, it is respectfully submitted that the applied combinations of art lack any teaching or suggestion of, inter alia:

Claim 81's required directing the debiting of funds equal to the monetary gift amount from a deposit account at a financial institution associated with the requesting donor, to a deposit account at a financial institution associated with the service provider, and the directing of funds to be credited to the deposit account recited in claim 58 (e.g.,

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the deposit account of the designated recipient), from the deposit account associated with the service provider.

**4. THE REJECTION IS BASED EITHER ON AN IMPROPER HINDSIGHT
RECONSTRUCTION OF THE INVENTION BASED ON THE APPLICATIONS OWN
TEACHINGS OR ON PURE SPECULATION**

Inherency requires certainty, not speculation. In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); In re King, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986); W. L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983); In re Oelrich, 666 F.2d 578, 212 USPQ 323 (CCPA 1981); In re Wilding, 535 F.2d 631, 190 USPQ 59 (CCPA 1976). Objective evidence must be relied upon to defeat the patentability of the claimed invention. Ex parte Natale, 11 USPQ2d 1222 (BPAI 1988).

Furthermore, as the Federal Circuit recently reiterated, reliance on common knowledge and/or common sense also cannot be the basis of finding obviousness (See In re Lee, 61 USPQ 2d 1430 (Fed. Circ. 2002)). The deficiencies in the applied art cannot be remedied by general conclusions which, in view of the disclosure in the present application, may appear to be common sensible.

As discussed above, the record in this case establishes that the Examiner has opted to rely on simplicity and hindsight rather than the proper criteria for resolving patentability. Based on the objective evidence, there is no possibility that the applied

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prior art could result in the combination defined by the claims. Furthermore, there is no objective basis which could support a conclusion that the applied prior art would have made the proposed modifications desirable or obvious, since the proposed modifications are inconsistent with the prior art's own teachings and stated purposes. Since any teaching or suggestion of the present invention is absent, the basis for the rejection can only be viewed as nothing more than a hindsight reconstruction of the present invention using the Applicants' claims as a guide (See In re Deminski supra).

The appealed claims have been rejected without objective factual support or rational. The art cited in support of the rejections has been applied in a manner inconsistent with its own teachings. Modifications to the applied art have been proposed for which no motivation exist. Express limitations set forth in the claims have been completely or effectively ignored.

The evidence shows that there is nothing in the applied art to support the Examiner's position that the present claims are anticipated and obvious. Hence, at best, it can only be concluded that the rejection of the claims, as set out in the final Official Action, reflects an improper hindsight reconstruction of the invention using the inventors own disclosure, or reliance on pure speculation.

CONCLUSION

It is respectfully submitted that the Examiner (i) has failed to establish a prima facie case for the rejection, (ii) has proposed to modify the applied art in a manner which is

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unmotivated, (iii) has failed to apply art which teaches or suggests the claimed invention, and (iv) has, at best, attempted to improperly reconstruct the invention using the inventors own disclosure or relied on pure speculation in rejecting the claims. Thus, the rejection of the pending claims over the applied prior art is improper.

In summary, Applicants respectfully submit that the applied art does not teach or suggest features recited in each of the rejected independent claims, as well as features recited in the dependent claims, and the Examiner has failed provided reasonable evidence to support a contrary conclusion. Furthermore, the proposed modifications to the applied references are themselves unmotivated and therefore improper. Accordingly, it is submitted that the art does not provide any teaching, or suggestion within its teachings, which would lead to the features or advantages of the instant invention, and the claims patentably define over the art. The rejections can therefore only be based on an improper hindsight reconstruction or pure speculation. Thus, the rejection of the pending claims is in error, and reversal is clearly in order and is courteously solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of

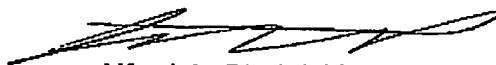
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this paper, including extension of time fees, to Deposit Account 01-2135 and please credit any excess fees to such deposit account.

Respectfully submitted,

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APPENDIX OF CLAIMS UNDER APPEAL

Claim 58 (Previously Presented): A method for making a monetary gift, comprising:

receiving, via a network, a request to send an electronic greeting card and to make an associated monetary gift in an amount, on behalf of a requesting donor to a designated recipient;

processing the received request to generate the electronic greeting card including a notification of the monetary gift;

transmitting, via the network, the generated electronic greeting card to the designated recipient; and

directing a crediting of funds equal to the monetary gift amount to a deposit account.

Claim 59 (Previously Presented): The method of claim 58, wherein the electronic greeting card is transmitted to the designated recipient at one of 1) a time subsequent to the directing of the crediting of the funds to the deposit account, and 2) a time concurrent with the directing of the crediting of the funds to the deposit account.

Claim 60 (Previously Presented): The method of claim 58, wherein:

the electronic greeting card includes a hyper-link;

the funds are directed to be credited to the deposit account subsequent to an

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activation of the hyper-link; and
the deposit account is at a financial institution.

Claim 61 (Previously Presented): The method of claim 60, further comprising:
activating the hyper-link; and
receiving, via the activated hyper-link, information identifying the designated
recipient;

wherein the funds are directed to be credited to the deposit account subsequent
to receipt of the information identifying the recipient;

wherein the deposit account is associated with the designated recipient.

Claim 62 (Previously Presented): The method of claim 61, further comprising:
processing the received information identifying the designated recipient to
determine if the designated recipient is a member of an enclosed community prior to the
directing of the crediting of the funds to the deposit account associated with the
designated recipient; and

if it is determined that the designated recipient is not a member of the enclosed
community, transmitting a notice, via the network, to the designated recipient, that the
designated recipient must become a member of the enclosed community before the
funds are directed to be credited to the deposit account associated with the designated
recipient.

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Claim 63 (Previously Presented): The method of claim 58, wherein the electronic greeting card includes a hyper-link, and further comprising:

further transmitting, via the network, the transmitted electronic greeting card including the hyper-link and the notification of the monetary gift to a non-designated recipient;

activating the hyper-link in the further transmitted electronic greeting card;

receiving, via the activated hyper-link, information identifying the non-designated recipient;

processing the received information identifying the non-designated recipient to determine if the non-designated recipient is a member of an enclosed community;

if it is determined that the non-designated recipient is not a member of the enclosed community, transmitting a notice, via the network, to the non-designated recipient, that the non-designated recipient must become a member of the enclosed community before funds are directed to be credited to the deposit account; and

if it is determined that the non-designated recipient is a member of the enclosed community, directing the crediting of the funds equal to the monetary gift amount to the deposit account;

wherein the deposit account is at a financial institute and is associated with the non-designated recipient.

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Claim 64 (Previously Presented): The method of claim 58, further comprising:
debiting a payment account at a financial institute associated with the requesting donor;

wherein the payment account associated with the requesting donor is debited at a time subsequent to an activation of a hyper-link included in the transmitted electronic greeting card.

Claim 65 (Previously Presented): The method of claim 58, further comprising:
processing the received request to determine if the designated recipient is a member of an enclosed community prior to processing the request to generate the electronic greeting card including the notification of the monetary gift;

wherein, if it is determined that the designated recipient is not a member of the enclosed community, the transmitted electronic greeting card includes a notification that the recipient must become a member of the enclosed community before funds are directed to be credited to the deposit account.

Claim 66 (Previously Presented): The method of claim 58, wherein the request is received from an electronic greeting card service.

Claim 67 (Previously Presented): The method of claim 58, wherein:
the request is received by, the received request is processed by and the

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generated electronic greeting card is transmitted by an electronic greeting card service;
and

the crediting of funds is directed by a payment service provider.

Claim 68 (Previously Presented): The method of claim 58, further comprising:
transmitting, via the network, the generated electronic greeting card to an electronic
greeting card service prior to transmitting the electronic greeting card to the designated
recipient.

Claim 69 (Currently Amended): A system for making a monetary gift,
comprising:

a communications port configured to receive a request to send an electronic
greeting card and to make an associated monetary gift in an amount, on behalf of a
requesting donor to a designated recipient, via a network; and

a processor configured to process the received request to generate the electronic
greeting card including a notification of the monetary gift;

wherein the communications port is further configured to transmit the electronic
greeting card to the designated recipient via the network; and

wherein the processor is further configured to direct funds equal to the monetary
gift amount to be credited to a deposit account.

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Claim 70 (Previously Presented): The system of claim 69, wherein the processor is further configured to cause the electronic greeting card to be transmitted to the recipient at one of 1) a time subsequent to the directing of the crediting of the funds to the deposit account, and 2) a time concurrent with the directing of the crediting of the funds to the deposit account.

Claim 71 (Previously Presented): The system of claim 69, wherein:
the generated electronic greeting card includes a hyper-link;
the communications port is further configured to receive information via the network over the hyper-link;
the processor is further configured to direct the funds to be credited to the deposit account subsequent to receipt of the information over the hyper-link; and
the deposit account is at a financial institute.

Claim 72 (Currently Amended): The system of claim 71, wherein:
the information received via the network over the hyper-link identifies the designated recipient;
the processor is further configured to direct the funds to be credited to the deposit account subsequent to receipt of the information identifying the designated recipient; and
the deposit account is associated with the designated recipient.

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Claim 73 (Previously Presented): The system of claim 72, wherein:

the processor is further configured to (1) process the received information identifying the designated recipient to determine if the designated recipient is a member of an enclosed community prior to the directing of the crediting of the funds to the deposit account associated with the designated recipient, and (2) if it is determined that the designated recipient is not a member of the enclosed community, cause the communications port to transmit a notice to the designated recipient that the designated recipient must become a member of the enclosed community before the funds are directed to be credited to the deposit account associated with the designated recipient.

Claim 74 (Previously Presented): The system of claim 69, wherein:

the generated greeting card includes a hyper-link;

the communications port is further configured to receive, via the network over the hyper-link, information identifying a non-designated recipient subsequent to a transmission of the electronic greeting card;

the processor is further configured to process the information identifying the non-designated recipient to determine if the non-designated recipient is a member of an enclosed community;

if it is determined that the non-designated recipient is not a member of the enclosed community, the processor is further configured to cause the communications port to transmit a notice to the non-designated recipient, via the network, that the non-designated

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recipient must become a member of the enclosed community before the funds are directed to be credited to the deposit account;

if it is determined that the non-designated recipient is a member of the enclosed community, the processor is further configured to direct the funds equal to the monetary gift amount to be credited to the deposit account; and

the deposit account is at a financial institute and is associated with the non-designated recipient.

Claim 75 (Previously Presented): The system of claim 69, wherein:

the processor is further configured to direct funds to be debited from a payment account associated with the requesting donor; and

the payment account associated with the donor is directed to be debited at a time subsequent to an activation of a hyper-link included in the transmitted electronic greeting card.

Claim 76 (Previously Presented): The system of claim 69, wherein:

the processor is further configured to process the request to determine if the designated recipient is a member of an enclosed community prior to generating the electronic greeting card including the notification of the monetary gift; and

if it is determined that the designated recipient is not a member of the enclosed community, the generated electronic greeting card includes a notification that the

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designated recipient must become a member of the enclosed community before the funds are directed to be credited to the deposit account.

Claim 77 (Previously Presented): The system of claim 69, wherein the request is received from an electronic greeting card service.

Claim 78 (Previously Presented): The system of claim 69, wherein the request is received by an electronic greeting card service.

Claim 79 (Previously Presented): The system of claim 69, wherein the communications port is further configured to transmit, via the network, the generated electronic greeting card to an electronic greeting card service.

Claim 80 (Previously Presented): An article of manufacture for making a monetary gift, comprising:

a computer readable medium; and

computer programming stored on the medium;

wherein the stored computer programming is configured to be readable from the computer readable medium by a computer to thereby cause the computer to operate so as to:

receive a request to make a monetary gift on behalf of a requesting donor to a

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designated recipient, and to send an associated electronic greeting card;
generate the electronic greeting card including a notification of the monetary gift,
based on the received request;
cause the electronic greeting card to be transmitted to the designated recipient;
and
cause funds equal to the monetary gift amount to be credited to a deposit
account.

Claim 81 (Currently Amended): The method according to claim 58, wherein
the request is received, the received request is processed, the generated electronic
greeting card is transmitted, and the crediting is directed by a service provider, and
further comprising:

directing a debiting of funds equal to the monetary gift amount from a deposit
account at a financial institution associated with the requesting donor to a deposit
account at a financial institution associated with the service provider;

wherein the funds are directed to be credited to the deposit account from the
deposit account associated with the service provider.

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APPENDIX OF AFFIDAVITS AND DECLARATIONS

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APPENDIX OF DECISIONS IN RELATED PROCEEDINGS

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